IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CMI, INC.	)	**FILED: April 5, 1996**
Plaintiff	)	
	)	
vs.	)	**Case No. 3:93CV-265-H**
	)	
INTOXIMETERS, INC., et al.)		
Defendants	)	

MOTION TO RENDER DECISIONS FINAL AND APPEALABLE

Comes the Plaintiff, CMI, Inc. ("CMI"), by counsel, and hereby moves this Court to enter the attached Order, rendering all prior decisions in this action to be "final and appealable".

As grounds for this Motion, CMI notes that this Court rendered its Order on the issue of "exceptional circumstances" on April 1, 1996, and labelled that particular Order, *only*, to be "final and appealable". The April 1, 1996 Order does not reference the fact that the Opinions and Orders of this Court from the "patent" and "tort" phases of this litigation, entered on November 1, 1994, and November 16, 1995, respectively, have been made "final and appealable" as a result of this

Court's ruling on the exceptional circumstances issue.

As a result, and for purposes of clarification, CMI moves the Court to enter the attached Order (retroactively applied to April 1, 1996), expressly incorporating the Opinions and Orders entered November 1, 1994, and November 16, 1995, therein, and thereby rendering those Opinions and Orders to be "final and appealable", as of April 1, 1996.

Respectfully Submitted,

J. BRUCE MILLER
ANTHONY L. SCHNELL
J. BRUCE MILLER
LAW GROUP
621 West Main Street
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was hand-delivered to Robert M. Connolly, Stites & Harbison, 1800 Providian Center, 400 West Market Street, Louisville, Kentucky 40202-3352, and mailed to Wilbur L. Tomlinson, Armstrong, Teasdale, Schlafly, & Davis, One Metropolitan Square, Suite 2600, St. Louis, MO., 63102-2740, and Patrick W. Michael, Woodward, Hobson, & Fulton, 2500 First National

Tower, Louisville, Kentucky 40202, this the ___ day of April, 1996.

J. BRUCE MILLER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CMI, INC. **Plaintiff**	)	
vs.	)	**Case No.**
	3:93CV-265-H	
INTOXIMETERS, INC., et al. **Defendants**	)	

ORDER

The Court now considers Plaintiff's motion to award attorney's fees based upon a determination that this case is "exceptional" pursuant to 35 U.S.C. §285. The Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's motion for attorney's fees is DENIED.

IT IS HEREBY FURTHER ORDERED that the Memorandum Opinion and Order and Judgment entered by this Court on November 1, 1994, and the Memorandum Opinion and Order entered by this Court on November 16, 1995, are expressly incorporated herein by reference, and are hereby rendered to be final and appealable.

This is a final and appealable order.

This 1st day of April, 1996.

JOHN G. HEYBURN II
JUDGE, U. S. DISTRICT COURT

APPENDIX K

NOTE: PURSUANT TO FED. CIR R.47.6, THIS ORDER IS NOT CITABLE AS PRECEDENT. IT IS A PUBLIC ORDER.

United States Court of Appeals for the Federal Circuit

96-1353,-1367

CMI, INC.,

Plaintiff-Appellant,

v.

INTOXIMETERS, INC., MACQUORN FORRESTER, GLENN FORRESTER, and RANKIN FORRESTER,

Defendants/Cross-Appellants

and

NATIONAL PATENT ANALYTICAL SYSTEMS, INC. and JOHN D. FUSCO,

Defendants-Appellees.[1]

ON MOTION

Before ARCHER, Chief Judge.

ORDER

CMI, Inc. moves to reform the caption to designate

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[1]Counsel for National Patent Analytical Systems, Inc. and John D. Fusco has not yet entered an appearance. If counsel does not enter an appearance, NPAS and Fusco will be identified only as Defendants.

Intoximeters, Inc. (Intoximeters) and National Patent Analytical Systems, Inc. (NPAS) as appellees. Intoximeters, Inc. et al. and National Patent Analytical Systems, Inc. et al. have not responded.

The court's original caption did not identify Intoximeters and NPAS's status at this court. We note that Intoximeters filed a cross appeal. This court does not additionally designate cross-appellants as appellees. Thus, Intoximeters will be designated as a cross-appellant but not as an appellee. However, because NPAS did not file a cross appeal, CMI correctly states that NPAS should be listed as an appellee. Finally, we have revised the official caption to reflect the four cross appellants and two appellees.

Accordingly,

IT IS ORDERED THAT:

CMI's motion to reform the caption is granted in part; the revised official caption is reflected above.

6-25-96
Date

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GLENN L. ARCHER, JR.
Chief Judge

cc: J. Bruce Miller, Esq.
Wilbur L. Tomlinson, Esq.
Charles J. Cronan, IV, Esq.